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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,701	09/19/2003	Soeng-Hun Kim	678-1262(P10929)	6042

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THE FARRELL LAW FIRM, P.C.  
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UNIONDALE, NY 11553

EXAMINER
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WIN, AUNG T

ART UNIT	PAPER NUMBER
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2617

MAIL DATE	DELIVERY MODE
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04/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/665,701	<b>Applicant(s)</b> KIM ET AL.	
	<b>Examiner</b> AUNG T. WIN	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/21/2007 has been entered.

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Republic of Korea on 09/19/2002. It is noted, however, that applicant **has not filed a certified copy of the 2002-57182 application as required by 35 U.S.C. 119(b).**

### ***Response to Arguments***

Applicant's arguments filed on 12/21/2007 with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1- 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terry (US20040116125A1) in view of Laakso (US006671512B2).

1.1 Regarding Claims 1, 6 & 7, Terry discloses a method for switching user equipment (UE) transmission scheme between point-to-point (PTP) scheme and point-to-multipoint (PTM) scheme, by a Node B [figure 2], which provides an MBMS (Multimedia Broadcast/Multicast Service) service to the user equipment. Terry discloses that mobile system determining the type transmission scheme according to a number of at least one UE receiving the MBMS service within the cell [Switching criteria: numbers of users in a cell and/or other cell information such as information on cell conditions, available sources, etc. (0016 – 0023)]. Thus, Terry teaches switching transmission scheme from one to another based on cell condition. But Terry does not explicitly disclose that the cell conditions indicating base station measured total transmission power is greater than power threshold.

Laakso discloses base station periodically reports total downlink transmission power to the radio network controller RNC from base station by using radio resource

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(RR) indication [Column 11, Line 23-26] in order to optimize the system performance by RNC [see local control 2.LC of the RNC: Figure 1] [downlink load control by RNC: column 16-19]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention of made to modify the method and system as disclosed by Terry to indicate base station transmission power overload conditions as taught by Laakso to report RNC the base station cell condition in channel switching determination as claimed. One of ordinary skill in the art at the time of invention of made to do this to reduce the network interference and to optimize the network performance.

1.2 Claims 8, 13, 14, 19, 20 & 25 are rejected for the same reasons as stated above in Claim 1 rejection because claimed method is substantially close to corresponding method of Claim 1.

1.3 Claims 2, 9, 15, 21 are rejected as stated above in Claim 1 rejection. Modified method discloses periodically reporting a measurement message i.e., claimed waiting time [Laakso: Column 11, Line 23-26].

1.4 Claims 3, 4, 5, 10, 11, 12, 16, 17, 18, 22, 23 & 24 are rejected as stated above in Claim 1 rejection because modified method discloses radio link indicator that identify the MBMS service and unique MBMS indicator for identifying active user for MBMS service [Terry: 0022].

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AUNG T. WIN whose telephone number is (571)272-7549. The examiner can normally be reached on 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duc Nguyen can be reached on (571) 272-7503. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aung T Win/  
Examiner, Art Unit 2617

/Duc Nguyen/

Supervisory Patent Examiner, Art Unit 2617